

APPEAL NO. 020327
FILED MARCH 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 15, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th, 14th, 15th, and 16th quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

Since the parties stipulated that the claimant has an IR of 16% (as was certified by the designated doctor appointed to determine maximum medical improvement and IR), we find no merit in the claimant's assertion that he has a 39% IR, as was certified by his treating doctor.

The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods for the 13th, 14th, 15th, and 16th quarters. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search effort.

The claimant claimed he had no ability to work during the qualifying periods for the 13th and 14th quarters, and he did not document any job search for those qualifying periods. Conflicting medical reports were presented regarding the claimant's ability to work. There are several medical reports from doctors that reflect that the claimant has some ability to work. The hearing officer found that the claimant had the ability to work in

a sedentary/light capacity during the relevant qualifying periods. The claimant did not document a job search in each week of the qualifying period for the 15th quarter, and the hearing officer's decision indicates that the hearing officer was not persuaded that the job contacts that were made reflected a good faith effort to obtain employment commensurate with the claimant's ability to work. The claimant said that he worked for part of the qualifying period for the 16th quarter, but there was no Application for SIBs (TWCC-52) in evidence for the 16th quarter nor did the claimant provide any documentation that he looked for work or worked during the qualifying period for that quarter. The hearing officer found that during the relevant qualifying periods the claimant did not make a good faith effort to obtain employment commensurate with his ability to work and concluded that the claimant is not entitled to SIBs for the 13th, 14th, 15th, and 16th quarters.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge